

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA, )  
)  
Plaintiff, )  
)  
vs. )  
)  
DENNIS WILSON, )  
)  
Defendant. )

Case Number: CR 05 1849 JH

**RESPONSE IN OPPOSITION TO DEFENDANT JARVIS’  
MOTION FOR BRADY/GIGLIO/GILES/KYLES MATERIALS**

The Defendant, Dennis Wilson, by his attorney, Louren Oliveros of Gorence & Oliveros, P.C., hereby submits the following Response in Opposition to Defendant Jarvis’ Motion for Brady/Giglio/Giles/Kyles Materials [Doc. 1155]:

Mr. Gorence is not a government witness. Mr. Jarvis filed a motion to dismiss the indictment against him, [Doc. 1076], based, in part, on the premise that he was denied the counsel of his choice, Mr. Gorence, as a result of the Court’s denial of Mr. Jarvis’ motion to release funds. At the hearing on the motion, the government subpoenaed Mr. Gorence to testify. Mr. Gorence accepted service of the subpoena by facsimile. Because of the compelled testimony of Mr. Gorence, Mr. Jarvis now claims that Mr. Gorence was a witness against Mr. Jarvis and that they are entitled to impeachment evidence regarding Mr. Gorence. The record, however, demonstrates that Mr. Gorence was compelled to testify at the hearing and respond to questions posed to him. Mr. Gorence did so, as was his obligation under subpoena. This issue has been ruled upon by the Honorable Lorenzo Garcia in his Order Denying Defendant Jarvis’ Motion to Disqualify Counsel. Judge Garcia found that Mr. Gorence was not a government witness and, further, that the carefully

tailored questions posed to Mr. Gorence did not reveal privileged information. [Doc. 1165 at p. 6]. Judge Garcia's determination should stand and the motion should be denied.

Furthermore, *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963) is only applicable when there is a reasonable possibility that undisclosed evidence would affect the trial. *United States v. Buchanan*, 891 F.2d 1436, 1443-44 (10<sup>th</sup> Cir. 1989). As the *Buchanan* court held, "Where a witness' credibility is not material to the question of guilt, failure to disclose impeachment evidence does not violate *Brady*." *Id.* Since Mr. Gorence is not a government witness and because he will certainly not testify at the trial in this matter on any issue, Mr. Jarvis' motion should be denied.

Respectfully submitted,

Electronically filed: 12/19/07

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I HEREBY CERTIFY that a true and correct copy of the foregoing has been emailed by CM/ECF to all parties of record on this 19<sup>th</sup> day of December, 2007.

Electronically filed: 12/19/07

Louren Oliveros